TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 377.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

vs.

BEN B. SWARTZ.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

FILED JUNE 3, 1921.

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THE NORTHERN DISTRICT OF CALIFORNIA.

1 *Indictment.*

United States for America. In the District Court of the United States for the Eastern District of Michigan, Southern Division.

Of the March Term, A. D. 1920.

EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION, *ss.*

The grand jurors of the United States of America empaneled and sworn to inquire in and for the body of the southern division of the Eastern District of Michigan, upon their oaths present: That heretofore, to wit: On the thirteenth day of April, in the year of our Lord one thousand nine hundred and twenty, at the city of Detroit in the southern division of the Eastern District of Michigan and within the jurisdiction of this honorable court, one Ben B. Schwartz, late of the city of Detroit aforesaid, did unlawfully, wilfully, and knowingly make and exact an unjust and unreasonable rate and charge for handling and dealing in, and dealing with a certain quantity of food, to wit, potatoes, hereinafter more specifically mentioned, said potatoes being a necessary within the meaning of the act of Congress approved August 10, 1917, as amended October 22, 1919, and entitled "An act to provide further for the national security and defense by encouraging production, conserving the supply, and controlling the distribution of food products and fuel," by then and there making and charging for a certain quantity of food, to wit, one 150-pound bag of potatoes the price of fourteen dollars ($14) per bag, which said price was exacted from and charged to a certain firm, to wit,

2 Hollow Brothers, 369 Michigan Avenue, Detroit, Michigan, which said firm purchased the said potatoes from the said Ben B. Schwartz at the time and place aforesaid; said price of fourteen dollars ($14) per bag covering and containing an unjust and unreasonable rate or charge for the handling, dealing in and dealing with the said necessary, to wit: potatoes, in violation of the aforesaid act of Congress, which said act of Congress was then and there in full force and effect, the same being a war measure adopted by Congress to provide for conditions existing during the state of war between the United States and Germany, which said state of war between the United States and Germany as defined by said act existed at the time of the sale aforesaid, and still continues to exist, contrary to the form, force, and effect of the act of Congress in such case made and provided and against the peace and dignity of the United States.

JOHN E. KINNANE,
United States Attorney.
WALTER I. MCKENZIE,
Assistant U. S. Attorney,
Eastern District of Michigan.

A true bill,

F. B. BAUER,
Foreman.

Filed this 16th day of April, 1920.

ELMER W. VOORHEIS, *Clerk.*

3 UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

Be it remembered that on the 19th day of April, A. D. 1920, in said district, before J. Stanley Hurd, a United States commissioner for the Eastern District of Michigan, duly appointed and qualified to take acknowledgments of bail, etc., in and for said Eastern District, personally appeared Ben B. Schwartz, of Detroit, in said district, and produced as sureties Harry J. Purse and Charles L. Randall, and the said Harry J. Purse and Charles L. Randall jointly and severally acknowledged themselves to owe unto the said United States of America the sum of one thousand ($1,000.00) dollars, good and lawful money of the United States, to be levied of their goods and chattels, lands, and tenements if default be made in the conditions following, to wit:

The condition of this recognizance is such that if the above bounden Ben B. Schwartz shall personally be and appear in the District Court of the United States for the Eastern District of Michigan at the courthouse in Detroit in said Eastern District on Tuesday the 20th day of April, A. D. 1920, at 9 o'clock forenoon of said day, and from day to day and term to term thereafter, to answer to an indictment which may be exhibited and filed in said court by the grand jurors of the United States for the body of Eastern District of Michigan against Ben B. Schwartz and abide such order and determination as said court may make concerning him on said indictment or information, and shall not depart said court without leave thereof, then the above obligation to be void; otherwise to remain in full force and effect.

BEN B. SCHWARTZ.
HARRY J. PURSE.
CHARLES L. RANDALL.

Taken, subscribed, and acknowledged before me this 19th day of April, A. D. 1920.

J. STANLEY HURD,
U. S. Commissioner, Eastern District of Michigan.

CHARLES L. RANDALL, *Oxford, Mich.*
HARRY J. PURSE, *435 West Jefferson.*
BEN B. SCHWARTZ, *371 Russell St.*
LEO M. BUTZEL, *of Counsel.*

EASTERN DISTRICT OF MICHIGAN, *ss:*

Before me, J. Stanley Hurd, a commissioner appointed by the District Court of the United States for the Eastern District of Michigan, personally appeared this day Harry J. Purse and Charles L. Randall, who, being first duly sworn, does, each for himself, depose that he is a resident and freeholder of the Eastern District of Michigan; that he is worth the sum of five thousand and upwards dollars after his debts are paid; that he is seized in his own right of real

estate in the district aforesaid, whose actual and present cash value, free and clear of all incumbrances whatever, amounts to five thousand and upwards dollars; and that the real estate hereinbefore referred to by him is situated in Detroit and described as several lots on east side of Trumbull Ave., constituting entire frontage between Ash and Sycamore owned by said Randall, No. 435 West Jefferson Ave., owned by said Purse, both said parcels being free and clear.

BEN B. SCHWARTZ.
HARRY J. PURSE.
CHARLES L. RANDALL.

Sworn and subscribed before me this 19th day of April, A. D. 1920.

J. STANLEY HURD,
U. S. Commissioner for the Eastern District of Michigan.

Filed April 20th, 1920.

J. STANLEY HURD,
U. S. Commissioner.

(Endorsed:) No. 7001. District Court of the United States for the Eastern District of Michigan. The United States *vs.* Ben B. Schwartz. Final recognizance. Amount of bail, $1,000. Taken, acknowledged, and filed Apr. 20, '20. J. Stanley Hurd, U. S. Commissioner.

4 *Demurrer and motion to quash.*

United States of America. In the district court of the United States for the eastern district of Michigan, Southern Division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
BEN B. SCHWARTZ, DEFENDANT.

Now comes the above-named defendant, Ben B. Schwartz, solely for the purpose of this motion and demurrer, and for no other purpose whatsoever, and without waiving any of his legal rights in and about the indictment filed herein, and demurs to said indictment and moves to quash the same for the following reasons:

First. Because said indictment is insufficient as a matter of law.

Second. Because said indictment fails to state or show any offense committed by this defendant.

Third. Because said indictment is too vague and uncertain to constitutionally create any offense against the United States.

Fourth. Because said indictment is too vague, uncertain, and indefinite to state an offense against the United States.

Fifth. Because said indictment is so indefinite, uncertain, and vague that it does not inform this defendant of the nature of the offense with which he is charged.

5 Sixth. That said indictment is insufficient in law to state an offense under the statutes of the United States.

Seventh. Because the statute mentioned in said indictment is unconstitutional and void for the reason that it is vague, indefinite, and uncertain.

Eighth. Because the statute mentioned in said indictment, and the section thereof upon which said indictment is based, is unconstitutional and void, in that it fixes no standard of guilt, but leaves such standard to the variance of different courts and juries which may be called upon to act thereunder.

Ninth. Because said purported statute is unconstitutional and void, and the section thereof upon which said indictment is based is unconstitutional and void, in that it does not inform this defendant of the nature and cause of the accusation against him.

Tenth. Because said statute and the section thereof upon which said indictment is based, is unconstitutional and void in that it does not advise this defendant, in advance, as to what acts, if any, would constitute a violation thereof.

Eleventh. Because said statute and the section thereof upon which the indictment mentioned is based, is unconstitutional and void, in that it fails to define a crime or any offense against the United States, but merely declares that any person who shall commit an unjust or unreasonable act shall be deemed guilty of a felony.

Twelfth. Because the statute mentioned in said indictment, and the section thereof upon which said indictment is based, is too vague and uncertain to constitutionally create any offense against the United States, in that it makes the criminality of the act set

6 forth in the indictment depend upon the opinion of the jury at the trial of the cause, as to whether the rate or charge set forth in said indictment was unjust or unreasonable, and sets forth no definite standard or test for the guidance of the jury or this defendant.

Thirteenth. Because the statute mentioned in said indictment, and the section thereof upon which said indictment is based, is unconstitutional and void, in that it deprives this defendant of his property and liberty without due or any process of law.

Wherefore, the said defendant prays that for the foregoing reasons, or some one of them, the said indictment may be quashed, set aside, and held for naught.

ROCKWELL T. GUST,
STEVENSON, CARPENTER, BUTZEL & BACKUS,
Attorneys for Defendant.

Filed April 23, 1920.

ELMER W. VOORHEIS, *Clerk.*

7 *Memorandum opinion on demurrer and motion to quash.*

In the District Court of the United States for the Eastern District of Michigan, Southern Division

UNITED STATES OF AMERICA vs. BEN B. SCHWARTZ.	No. 7001.

Hon. John E. Kinnane, of Bay City, Michigan, United States district attorney.

Mr. Rockwell T. Gust and Messrs. Stevenson, Carpenter, Butzel & Backus, all of Detroit, Michigan, attorneys for defendant.

Memorandum opinion on demurrer and motion to quash.

TUTTLE, District Judge: This cause is now before the court on demurrer and motion to quash an indictment herein. The indictment is based upon the act of Congress approved August 10, 1917, as amended October 22, 1919, the so-called Lever Act. Defendant is charged with violating the provision of section four of said act, prohibiting the making of "any unjust or unreasonable rate or charge for handling or dealing in or with any necessaries," in making a certain sale of potatoes at a time and place, to a person, and at a price, specified in said indictment.

Defendant demurs to and moves to quash the indictment on the grounds that it is too vague, uncertain and indefinite, to state any offense against the United States, or to inform the defendant of the nature of the offense with which he is charged, and that the statute upon which the indictment is based, and the language of which is followed in said indictment, is unconstitutional and void for the same reasons.

8 The sole question, therefore, involved is whether the provision of section four of the Lever Act to the effect that "it is hereby made unlawful for any person * * * to make any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries" is unconstitutional for the reasons thus urged. The same question was considered and decided by this court adversely to the contentions of the Government in the case of Detroit Creamery Company et al. vs. John E. Kinnane et al., in which the bill of complaint was filed the day after the filing of the indictment herein, and in which the opinion and decree on final hearing have been this day filed. That case controls the disposition of the present one, and for the reasons stated in the opinion granting the permanent injunction

therein the present demurrer must be sustained and the motion to quash granted. An order will be entered to that effect.

ARTHUR J. TUTTLE,
District Judge.

DETROIT, MICH., *April 23rd, 1920.*

Filed April 23rd, 1920.

ELMER W. VOORHEIS,
Clerk.

9 *Order sustaining demurrer and granting motion to quash indictment.*

At a session of the District Court of the United States for the Eastern District of Michigan, continued and held pursuant to adjournment at the district court room in the city of Detroit, in said district, on Friday, the twenty-third day of April, in the year of our Lord one thousand nine hundred and twenty.

Present: The honorable Arthur J. Tuttle, United States district judge.

THE UNITED STATES OF AMERICA
vs.
BEN B. SCHWARTZ. } No. 7091.

On reading and filing the demurrer to and motion to quash the indictment herein, after due deliberation and the court being duly advised in the premises.

It is hereby ordered that said demurrer be, and the same is hereby, sustained, and the said motion to quash said indictment be, and the same is hereby, granted.

ARTHUR J. TUTTLE,
District Judge.

10 United States of America. In the District Court of the United States for the Eastern District of Michigan, Southern Division.

UNITED STATES OF AMERICA
vs.
BEN B. SCHWARTZ. } No. 7091.

Assignments of error.

And now comes the United States of America, by John E. Kinnane, United States attorney for the Eastern District of Michigan, and says that the District Court, who rendered the judgment in the above-entitled cause erred in the following particulars, to wit:

I.

Said District Court erred in holding and deciding that the provision of section 4 of the Lever Act, so called, as amended, being the act of Congress approved August 10, 1917, as amended by act of Congress approved October 22, 1919, which declares it to be unlawful and criminal to make any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries, or to exact excessive prices for any necessaries, is unconstitutional and void.

II.

Said District Court erred in sustaining the demurrer and granting the motion to quash the indictment, filed in the above entitled cause, charging said defendant, Ben B. Schwartz, with making an unjust and unreasonable charge or rate in handling or dealing in or with necessaries, and exacting excessive prices for necessaries.

III.

11 Said District Court erred in sustaining the demurrer and granting the motion to quash the indictment in this cause on the ground that section 4 of said Lever Act, as amended by the act of Congress approved October 22, 1919, which declares it to be unlawful and criminal to make any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries, is unconstitutional and void on the ground of vagueness and uncertainty.

IV.

Said District Court erred in sustaining the demurrer and granting the motion to quash the indictment, filed in the above entitled cause, charging said defendant, Ben B. Schwartz, with making an unjust or unreasonable charge or rate in handling or dealing in or with potatoes, in the city of Detroit, and State of Michigan.

V.

Said District Court erred in holding that the provision of said Lever Act as amended by act of Congress approved October 22, 1919, making it unlawful and criminal to make an unjust or unreasonable rate or charge in handling or dealing in or with necessaries, is unconstitutional and void.

VI.

Said District Court erred in failing and refusing to hold and decide that the provision of the said Lever Act, as amended, mentioned and described in assignment of error No. 1 is valid and constitutional.

VII.

Said District Court erred in failing and refusing to dismiss the demurrer and deny the motion to quash filed herein.

JOHN E. KINNANE,
United States Attorney, Eastern District of Michigan.

Filed April 27th, 1920.

ELMER W. VOORHEIS,
Clerk.

12 *Petition for writ of error.*

United States of America. In the District Court of the United States for the Eastern District of Michigan, Southern Division.

UNITED STATES OF AMERICA
vs.
BEN B. SCHWARTZ. } No. 7001.

And now comes the United States of America, by John E. Kinnane, United States attorney for the Eastern District of Michigan, conceiving itself aggrieved by the judgment entered on the 23rd day of April, A. D. 1920, in the above-entitled cause, and showing that in rendering said judgment certain errors were committed to the prejudice of the United States of America as appears in the assignments of error filed in this cause, does hereby appeal to the Supreme Court of the United States.

Wherefore, the United States of America prays that a writ of error may issue on its behalf out of the Supreme Court of the United States for the correction of the errors complained of, and that a transcript of the record, together with the assignments of error and proceedings and papers upon which said judgment was rendered, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 27th day of April, in the year of our Lord one thousand nine hundred and twenty.

JOHN E. KINNANE,
United States Attorney, Eastern District of Michigan.

Filed April 27th, 1920.

ELMER W. VOORHEIS,
Clerk.

13 *Order allowing writ of error.*

United States of America. In the District Court of the United States for the Eastern District of Michigan, Southern Division.

UNITED STATES OF AMERICA
vs.
BEN B. SCHWARTZ. } No. 7001.

At a session of the District Court of the United States for the Eastern District of Michigan, continued and held pursuant to ad-

journment at the district court room in the city of Detroit, in said district, on Tuesday, the 27th day of April, in the year of our Lord one thousand nine hundred and twenty.

Present: The Honorable Arthur J. Tuttle, United States district judge.

On reading and filing the petition of the United States of America praying for the allowance of a writ of error from the United States Supreme Court to this court, and praying also that a transcript of the record in said cause, duly authenticated, be prepared and sent to said United States Supreme Court, on filing the said petition and assignments of error intended to be urged by said United States of America,

On consideration thereof the court does allow the said writ of error from the United States Supreme Court, and that the said United States of America be not required to file any bond on such appeal.

ARTHUR J. TUTTLE,
United States District Judge.

Filed April 27th, 1920.

ELMER W. VOORHEIS,
Clerk.

14 Supreme Court of the United States, Washington, D. C.

UNITED STATES OF AMERICA,
Sixth Judicial Circuit, ss:

The President of the United States, to the honorable, the judge of the District Court of the United States for the Eastern District of Michigan, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you or some of you, between The United States of America, plaintiff, and Ben B. Swartz, defendant, a manifest error hath happened, to the great damage of the said plaintiff, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Supreme Court, together with this writ, so that you have the same at Washington, D. C., on the 25th day of May next, in the said Supreme Court of the United States, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Edward D. White, Chief Justice of the United States, the twenty-seventh day of April, in the year of our Lord one thousand nine hundred and twenty, and of the Independence of the United States of America the one hundred and forty-fourth.

[SEAL.] ELMER W. VOORHEIS,
Clerk of the District Court of the United States for the Eastern District of Michigan.

Allowed by—
ARTHUR J. TUTTLE,
United States District Judge.

(Endorsed:) No. 7001. United States of America. United States District Court Eastern District of Michigan, Southern Division. United States of America vs. Ben B. Swartz. Writ of error returnable May 25, 1920.

15 Supreme Court of the United States, Washington, D. C.

UNITED STATES OF AMERICA,
Sixth Judicial Circuit, ss:
To Ben B. Swartz, greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States to be holden at the city of Washington, D. C., on the 25th day of May next, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the Eastern District of Michigan, wherein the United States of America is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglas White, Chief Justice of the United States, this 27th day of April, in the year of our Lord one thousand nine hundred and twenty, and of the Independence of the United States of America the one hundred and forty-fourth.

ARTHUR J. TUTTLE,
United States District Judge.

Due and timely service of the within citation is hereby accepted this 3rd day of May, 1920.

LEO M. BUTZEL,
Attorney for Defendant in Error.

(Endorsed:) No. 7001. United States District Court, Eastern District of Michigan, Southern Division. The United States of America vs. Ben B. Swartz. Citation May 25, 1920.

16 United States of America. In the District Court of the United States for the Eastern District of Michigan, Southern Division.

UNITED STATES OF AMERICA
vs.
BEN B. SCHWARTZ. } No. 7001.

Designation.

And now comes the United States of America, by John E. Kinnane, United States attorney for the Eastern District of Michigan, and designates the following papers as those which will constitute the record on appeal in the above entitled cause:

1. Indictment.
2. Bond.
3. Demurrer to and motion to quash indictment.
4. Memorandum opinion on demurrer and motion to quash.
5. Judgment on demurrer to and motion to quash indictment.
6. Assignments of error.
7. Petition for writ of error.
8. Order allowing writ of error.
9. Writ of error.
10. Citation.

JOHN E. KINNANE,
United States Attorney, Eastern District of Michigan.

Filed April 27th, 1920.

ELMER W. VOORHEIS,
Clerk.

17 United States of America. In the District Court of the United States for the Eastern District of Michigan.

THE UNITED STATES OF AMERICA
vs.
BEN B. SWARTZ. } No. 7001.

EASTERN DISTRICT OF MICHIGAN, *ss:*

I, Elmer W. Voorheis, clerk of the District Court of the United States for the Eastern District of Michigan, do hereby certify and return to the writ of error of the United States of America in the above-entitled cause; that it is a true copy of the record and proceedings in said cause as the same appear of record and on file in my office; that I have compared the same with the originals, and it is a true and correct transcript therefrom and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Detroit, in said district this eighteenth day

of May, in the year of our Lord one thousand nine hundred and twenty, and of the Independence of the United States of America, the one hundred and forty-fourth.

[SEAL.] ELMER W. VOORHEIS,
Clerk.

(Indorsement on cover:) File No. 27734. E. Michigan, D. C. U. S. Term No. 377. The United States of America, Plaintiff in Error, vs. Ben B. Swartz. Filed June 3d, 1920. File No. 27734.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1920